

AMENDED IN ASSEMBLY MARCH 18, 1999

AMENDED IN ASSEMBLY MARCH 10, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

**No. 106**

**Introduced by Assembly Members Scott and Aroner and  
Senator Hayden**

**(Principal coauthor: Assembly Member Villaraigosa)**

**(Coauthors: Assembly Members Davis, Dutra, Havice,  
Hertzberg, Jackson, Keeley, Knox, Kuehl, Lempert,  
Longville, Romero, Shelley, Steinberg, Washington,  
Wesson, and Wildman)**

**(Coauthors: Senators Alpert, Figueroa, Perata, and Solis)**

December 22, 1998

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An act to add Article 4.5 (commencing with Section 12087) to Chapter 4 of Title 2 of Part 4 of the Penal Code, relating to firearm safety devices.

### LEGISLATIVE COUNSEL'S DIGEST

AB 106, as amended, Scott. Firearms: safety devices.

Existing law generally regulates the transfer and possession of firearms.

This bill would establish the ~~the~~ ~~Aroner-Scott~~ ~~Aroner-Scott-Hayden~~ Firearms Safety Act of 1999 (the act) and ~~would prohibit any person, firm, or corporation from importing firearms unless licensed by the Attorney General.~~

This bill would require that, effective ~~July 1, 2001~~ *January 1, 2002*, all firearms sold or transferred in this state, or

~~delivered for sale in this state by a licensed manufacturer, licensed importer, or a licensed dealer~~ *manufactured in this state*, be accompanied by a firearms safety device approved by the ~~Attorney General~~ *Department of Justice*.

This bill would require the Attorney General, not later than ~~July~~ *January* 1, 2000, to begin development of minimum safety standards for firearms safety devices that are designed to reduce the risk of unintentional injury by firearms. *The bill would also provide that the Attorney General report to the Legislature regarding the standards by January 1, 2001, and that the standards be effective January 1, 2002.*

The bill would require the ~~Attorney General, not later than July~~ *Department of Justice, effective January* 1, 2001, to certify laboratories to test child safety devices, and would authorize the Department of Justice to charge the laboratories a fee not exceeding the costs of certification. The bill would also require the department to notify the manufacturer, importer, or dealer of the department's determination regarding whether the firearms safety device may be sold in this state. The bill would further require the department, not later than July 1, 2001, to compile, publish, and maintain a roster listing all safety devices that have been tested as described above, have been determined by the department to meet the standards for child safety devices, and that may be sold in this state.

This bill would require any packaging or other descriptive material that accompanies a firearm sold or transferred ~~or manufactured in this state, or delivered for sale in this state by any licensed manufacturer, licensed importer, or licensed California dealer~~ to bear a label with a specified warning. The bill would also require the warning label be affixed to the firearm if the firearm is sold, transferred or delivered in this state without accompanying packaging.

This bill would authorize the Attorney General to recall any firearm or firearms safety device ~~distributed~~ *sold* in this state after ~~July 1, 2001~~ *January 1, 2002*, that does not conform to specified provisions of the act.

This bill would require each law enforcement agency investigating an incident to report specified information to the Attorney General in connection with unintentional

gunshot wounds sustained by children after the effective date of the act.

This bill would provide that any violation of specified provisions of the act would be punishable by a fine of \$1,000. A second violation of those provisions would be punishable by a fine of \$1,000 and would render a licensed manufacturer, licensed importer, or a licensed California dealer ineligible to manufacture or sell firearms for 30 days in this state. A third violation of those provisions would render a licensed manufacturer, licensed importer, or a licensed California dealer permanently ineligible to manufacture, import, or sell, respectively, firearms in this state.

By creating a new crime, this bill would impose a state-mandated local program.

This bill would declare that the act does not relieve any person from liability to any other person as may be imposed pursuant to common law, statutory law, or local ordinance. This bill would also declare that the act does not require or prohibit local ordinances that place more stringent requirements upon firearms manufacturers, importers, or California dealers regarding firearm use-limitation devices or trigger locks.

This bill would declare that the act does not apply to the commerce of certain firearms, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 4.5 (commencing with Section  
2 12087) is added to Chapter 4 of Title 2 of Part 4 of the  
3 Penal Code, to read:  
4

Article 4.5. Child Accident Prevention Devices

12087. This article shall be known and may be cited as the ~~“Aroner-Scott~~ *“Aroner-Scott-Hayden* Firearms Safety Act of 1999.”

12087.5. The Legislature makes the following findings:

(a) In the years 1987 to 1996, nearly 2,200 children in the United States under the age of 15 years died in unintentional shootings. In 1996 alone, 138 children were shot and killed unintentionally. Thus, more than 11 children every month, or one child every three days, were shot or killed unintentionally in firearms-related incidents.

(b) The United States leads the industrialized world in the rates of children and youth lost to unintentional, firearms-related death. A 1997 study from the federal Centers for Disease Control and Prevention reveals that for unintentional firearm-related deaths for children under the age of 15, the rate in the United States was nine times higher than in 25 other industrialized countries combined.

(c) While the number of unintentional deaths from firearms is an unacceptable toll on America's children, nearly eight times that number are treated in U.S. hospital emergency rooms each year for nonfatal unintentional gunshot wounds.

(d) A study of unintentional firearm deaths among children in California found that unintentional gunshot wounds most often involve handguns.

(e) A study in the December 1995 issue of the Archives of Pediatric and Adolescent Medicine found that children as young as three years old are strong enough to fire most commercially available handguns. The study revealed that 25 percent of three to four year olds and 70 percent of five to six year olds had sufficient finger strength to fire 59 (92 percent) of the 64 commonly available handguns referenced in the study.

(f) The Government Accounting Office (GAO), in its March 1991 study, “Accidental Shootings: Many Deaths

1 and Injuries Caused by Firearms Could be Prevented,”  
2 estimates that 31 percent of accidental deaths caused by  
3 firearms might be prevented by the addition of two safety  
4 devices: a child-resistant safety device that automatically  
5 engages and a device that indicates whether the gun is  
6 loaded. According to the study results, of the 107  
7 unintentional firearms-related fatalities the GAO  
8 examined for the calendar years 1988 and 1989, eight  
9 percent could have been prevented had the firearm been  
10 equipped with a child-resistant safety device. This eight  
11 percent represents instances in which children under the  
12 age of six unintentionally shot and killed themselves or  
13 other persons.

14 (g) Currently, firearms are the only products  
15 manufactured in the United States that are not subject to  
16 minimum safety standards.

17 (h) A 1997 public opinion poll conducted by the  
18 National Opinion Research Center at the University of  
19 Chicago in conjunction with the Johns Hopkins Center  
20 for Gun Policy and Research found that 74 percent of  
21 Americans support safety regulation of the firearms  
22 industry.

23 (i) Some currently available trigger locks and other  
24 similar devices are inadequate to prevent the accidental  
25 discharge of the firearms to which they are attached, or  
26 to prevent children from gaining access to the firearm.

27 ~~12088. (a) Beginning July 1, 2001, no person, firm or~~  
28 ~~corporation may import firearms for sale into California~~  
29 ~~unless licensed by the Attorney General.~~

30 ~~(b) Beginning February 1, 2001, all licensed firearm~~  
31 ~~importers shall require that each employee obtain a~~  
32 ~~certificate of eligibility pursuant to paragraph (4) of~~  
33 ~~subdivision (a) of Section 12071, which shall be renewed~~  
34 ~~annually, prior to being allowed to come into contact with~~  
35 ~~or having access to any firearm.~~

36 ~~(c) The licensee shall prohibit any employee who the~~  
37 ~~licensee knows or reasonably should know is within a class~~  
38 ~~of persons prohibited from possessing firearms pursuant~~  
39 ~~to Section 12021 or 12021.1 of this code, or Section 8100 or~~

1 ~~8103 of the Welfare and Institutions Code, from coming~~  
2 ~~into contact with or having access to any firearm.~~

3 ~~12088.1.~~

4 ~~12088.~~ Effective ~~July~~ January 1, 2001:

5 (a) ~~On or before July 1, 2001, the~~ The Department of  
6 Justice shall certify laboratories to verify compliance with  
7 standards for firearms safety devices set forth in Section  
8 12088.2.

9 (b) The Department of Justice may charge any  
10 laboratory that is seeking certification to test firearms  
11 safety devices a fee not exceeding the costs of  
12 certification.

13 (c) The certified laboratory shall, at the  
14 manufacturer's or importer's or dealer's expense, test the  
15 firearms safety device and submit a copy of the final test  
16 report directly to the Department of Justice along with  
17 the firearms safety device. The department shall notify  
18 the manufacturer, dealer, or importer of its receipt of the  
19 final test report and the department's determination as to  
20 whether the firearms safety device tested may be sold in  
21 this state.

22 (d) On and after July 1, 2001, the Department of  
23 Justice shall compile, publish, and thereafter maintain a  
24 roster listing all of the safety devices that have been tested  
25 by a certified testing laboratory, have been determined  
26 to meet the department's standards for firearms safety  
27 devices and may be sold in this state.

28 (e) The roster shall list, for each firearms safety device,  
29 the manufacturer, model number, and model name.

30 ~~(f)~~

31 ~~12088.1.~~ Effective January 1, 2002:

32 (a) All firearms sold or transferred in this state, ~~or~~  
33 ~~delivered by a licensed manufacturer or licensed~~  
34 ~~importer to a licensed dealer for sale by a licensed~~  
35 ~~firearms dealer, including private transfers through a~~  
36 ~~dealer, and all firearms manufactured in this state, shall~~  
37 include or be accompanied by a firearms safety device  
38 that is listed on the Department of Justice's roster of  
39 approved firearms safety devices.

~~(g) All firearms sold or transferred in this state, or delivered by a licensed dealer for sale in this state, shall include or be accompanied by the approved child accident prevention device supplied to the dealer by the licensed manufacturer or importer. If the firearm was produced prior to January 1, 2001, the firearm shall be sold with a firearms safety device approved by the Attorney General.~~

~~(h)~~

~~(b) All firearms sold or transferred in this state, or delivered by a licensed manufacturer, licensed importer, or licensed dealer for sale by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured in this state shall bear the warning label or labels prescribed in Section 12088.3.~~

~~12088.2. (a) No later than July January 1, 2000, the Attorney General shall commence development of regulations to implement a minimum safety standard for firearms safety devices to significantly reduce the risk of firearms-related injuries to children 18 years of age and younger. The final standard shall do all of the following:~~

~~(1) Address the risk of injury from unintentional gunshot wounds.~~

~~(2) Address the risk of injury from self-inflicted gunshot wounds by unauthorized users.~~

~~(3) Include provisions to ensure that all firearms safety devices are reusable and of adequate quality and construction to prevent children and unauthorized users from firing the firearm and to ensure that these devices cannot be readily removed from the firearm except by an authorized adult user utilizing the key, combination, or other method of access intended by the manufacturer of the device.~~

~~(4) Include additional provisions as appropriate.~~

~~(b) The Attorney General shall consult, for the purposes of guidance in development of the standard, test protocols such as those described in Title 16 (commencing with Part 1700) of the Code of Federal Regulations, relating to poison prevention packaging standards. The Attorney General shall also give~~

1 appropriate consideration to the use of devices that are  
2 not detachable, but are permanently installed and  
3 incorporated into the design of a firearm. The Attorney  
4 General shall adopt and issue regulations implementing  
5 a final standard not later than January 1, 2001. *The*  
6 *Attorney General shall report to the Legislature on these*  
7 *standards by January 1, 2001.* The final standard shall be  
8 effective ~~July 1, 2001~~ January 1, 2002.

9 12088.3. (a) The packaging of any firearm and any  
10 descriptive materials that accompany any firearm sold or  
11 transferred in this state, or delivered for sale in this state,  
12 by any licensed manufacturer, licensed importer, or  
13 licensed dealer, shall bear a label containing the following  
14 warning statement:

15  
16 WARNING

17  
18 Children are attracted to and can operate firearms that  
19 can cause severe injuries or death.

20  
21 Prevent child access by always keeping handguns  
22 locked away and unloaded.

23  
24 A yellow triangle containing an exclamation mark shall  
25 appear immediately before the word "Warning" on the  
26 label.

27 (b) If the firearm is sold or transferred without  
28 accompanying packaging, the warning label shall be  
29 affixed to the firearm itself by a method to be prescribed  
30 by regulation of the Attorney General.

31 (c) The warning statement required under  
32 subdivisions (a) and (b) shall be:

33 (1) Displayed in its entirety on the principal display  
34 panel of the firearm's package, and on any descriptive  
35 materials that accompany the firearm.

36 (2) Displayed in both English and Spanish in  
37 conspicuous and legible type in contrast by typography,  
38 layout, or color with other printed matter on that package  
39 or descriptive materials in a manner consistent with Part



1 1500.121 of Title 16, of the Code of Federal Regulations,  
2 or successor regulations thereto.

3 12088.4. (a) If at any time the Attorney General  
4 determines that a firearm or ~~child accident prevention~~  
5 *firearms safety* device subject to the provisions of this  
6 article and ~~distributed after July 1, 2001~~ *sold after January*  
7 *1, 2002*, does not conform with the standards and warnings  
8 required by Sections 12088.1, 12088.2, and 12088.3, the  
9 Attorney General may order the recall and replacement  
10 of the firearm or firearms safety device by the licensed  
11 manufacturer, *or licensed firearms dealer*, or order that  
12 the licensed manufacturer *or licensed firearms dealer*  
13 bring the firearm or firearms safety device into  
14 conformity with those requirements. If only the firearms  
15 safety device is recalled, the licensed manufacturer of the  
16 firearms safety device *or licensed firearms dealer* shall  
17 immediately provide a conforming replacement.

18 12088.5. (a) Each law enforcement agency  
19 investigating an incident shall report to the Attorney  
20 General any information obtained by the manufacturer,  
21 importer, or dealer which reasonably supports the  
22 conclusion that:

23 (1) Any incident in which a child 18 years of age or  
24 younger suffered an unintentional or self-inflicted  
25 gunshot wound inflicted by a firearm that was sold or  
26 transferred in this state, or delivered for sale in this state,  
27 by the licensed manufacturer, licensed importer, or  
28 licensed dealer, after the effective date of this article.

29 (2) Whether as a result of that incident the child died,  
30 suffered serious injury, or was treated for an injury by a  
31 medical professional.

32 12088.6. Any violation of ~~Section 12088, subdivision~~  
33 ~~(g) of Section 12088.1, subdivision (h) of Section 12088.1,~~  
34 *Section 12088.1* or Section 12088.3 is punishable by a fine  
35 of one thousand dollars (\$1,000). On the second violation  
36 of any of those sections, the licensed firearm  
37 manufacturer shall be ineligible to manufacture, the  
38 licensed firearm importer shall be ineligible to import, or  
39 the licensed firearm dealer shall be ineligible to sell,  
40 firearms in this state for 30 days, and shall be punished by

1 a fine of one thousand dollars (\$1,000). On the third  
2 violation of any of those sections, a firearm manufacturer  
3 shall be permanently ineligible to manufacture firearms  
4 in this state. On the third violation of any of those sections,  
5 a licensed firearm importer shall be permanently  
6 ineligible to import firearms into this state for sale in this  
7 state. On the third violation of any of those sections, a  
8 licensed firearm dealer shall be permanently ineligible to  
9 sell firearms in this state.

10 12088.7. (a) Compliance with the requirements set  
11 forth in this article shall not relieve any person from  
12 liability to any other person as may be imposed pursuant  
13 to common law, statutory law, or local ordinance.

14 (b) Nothing in this article shall require or prohibit any  
15 local ordinance which places a more stringent  
16 requirement upon firearms manufacturers, importers, or  
17 dealers regarding firearm use-limitation devices or  
18 trigger locks.

19 12088.8. (a) This article does not apply to the  
20 commerce of any firearm defined as an “antique firearm”  
21 in paragraph (16) of subsection (a) of Section 921 of Title  
22 18 of the United States Code.

23 ~~(b) This article does not apply to the commerce of any~~  
24 ~~firearm that is an item of memorabilia or a display~~  
25 ~~firearm.~~

26 ~~(c)~~

27 (b) This article shall not apply to the commerce of any  
28 firearm intended to be used by a full-time, paid peace  
29 officer as defined in Chapter 4.5 (commencing with  
30 Section 830) of Title 3 of Part 2.

31 SEC. 2. No reimbursement is required by this act  
32 pursuant to Section 6 of Article XIII B of the California  
33 Constitution because the only costs that may be incurred  
34 by a local agency or school district will be incurred  
35 because this act creates a new crime or infraction,  
36 eliminates a crime or infraction, or changes the penalty  
37 for a crime or infraction, within the meaning of Section  
38 17556 of the Government Code, or changes the definition



1 of a crime within the meaning of Section 6 of Article  
2 XIII B of the California Constitution.

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